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IN THE
COURT OF APPEALS OF INDIANA

J.S.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0508-JV-687
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Danielle Gregory, Magistrate
Cause No. 49D09-0507-JV-34

May 24, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant J.S. appeals the trial court's finding that he violated his probation. Specifically, he argues that the Indiana Rules of Evidence applied to the hearing and that the trial court erred in admitting his attendance records into evidence because they were not self-authenticating and therefore inadmissible hearsay. Finding that this was a revocation proceeding to which the Rules of Evidence do not apply but that the Chronological Case Summary (CCS) is unclear, we affirm and remand to the trial court for a clarification of the CCS.

FACTS[1]

On January 12, 2005, the State filed a petition alleging that fifteen-year-old J.S. was a delinquent child because he had violated the Indiana Compulsory Attendance Law, Indiana Code section 20-8.1-3-17,[2] by being truant from school without excuse for the majority of the school days in October 2004. On the same day, the State filed a Notice of Intent to Use Certified Records, stating that the State intended to offer into evidence certified school records at J.S.'s denial hearing or trial and that "said documents are available for inspection by contacting the State." Appellant's App. p. 25.

On February 28, 2005, J.S. entered into a plea agreement admitting that he was a delinquent child. The juvenile court placed J.S. on probation. On June 1, 2005, the State filed an Information of Delinquent Child Violation of Probation, alleging that J.S. had violated his probation by being truant from school. The juvenile court held a hearing on June

[1] We heard oral argument on April 26, 2006, at Saint Mary of the Woods College. We appreciate the hospitality of the faculty, staff, students, and guests of the college, and we commend counsel for their able presentations.

29, 2005, in which the court found as follows:

> The Court will find that the State has met it's [sic] burden with respect to the allegation that [J.S.] was on formal probation. That he had continued absences without excuse from Margaret . . . McFarland Middle School on the dates indicated in the, the violation of probation in which it was found. And the Court will enter a true finding and will adjudicate [J.S.] as a delinquent child with respect to these new allegations.
>
> . . .
>
> The Court will continue him on his existing probation and release conditions.

Tr. p. 22, 24. J.S. now appeals.

DISCUSSION AND DECISION

Before reaching the evidentiary issue posed by J.S., we must consider the threshold issue of whether this hearing was a probation revocation or a new delinquency adjudication. The rules of evidence do not apply to "[p]roceedings relating to extradition, sentencing, probation, or parole; issuance of criminal summonses, or of warrants for arrest or search, preliminary juvenile matters, direct contempt, bail hearings, small claims, and grand jury proceedings." Ind. Evidence Rule 101(c)(2) (emphasis added). In revocation hearings, judges may consider any relevant evidence bearing some substantial indicia of reliability. Black v. State, 794 N.E.2d 561, 564 (Ind. Ct. App. 2003).

This hearing was held in response to an "Information of Delinquent Child Violation of Probation" filed by the State. Appellant's App. p. 35. At the start of the hearing, the trial court noted, "[W]e're set for a denial of a violation of probation," Tr. p. 10, and took judicial notice of the fact that J.S. was on formal probation. Tr. p. 11. But J.S. contends that this was a new delinquency adjudication to which the rules of evidence apply because the trial court

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[2] This statute has been repealed and replaced by Indiana Code section 20-33-2-6 effective July 1, 2005.

specifically "adjudicate[d] [J.S.] as a delinquent child with respect to these new allegations," Tr. p. 22, and because there was no underlying sentence to be executed in the event that J.S.'s probation was revoked. But the State notes that J.S. was scheduled for a review hearing the day after the probation violation information was filed in which the juvenile court would "consider extension or closure" of J.S.'s probation. Appellant's App. p. 33. Ultimately, the juvenile court decided in the hearing at issue here to continue J.S.'s existing probation and release conditions rather than to end his probation. Tr. p. 24. And the State conceded at oral argument that it was not seeking a new adjudication, but simply intended to have a hearing on J.S.'s probation violation. Thus, this was a probation violation hearing, and the rules of evidence did not apply.[3]

Be that as it may, the trial court added to the confusion through its CCS entries and statements. On June 29, 2005, the CCS entry states that J.S. was before the court for the "violation of conditions of PROBATION filed on 6/1/05." Appellant's App. p. 4. In that same entry, the CCS states, "The Court now adjudicates the Respondent a delinquent." Id. And as noted above, the trial court stated that J.S. was adjudicated to be a delinquent with respect to new allegations at the end of the probation revocation hearing. We therefore remand to the trial court so that it may clarify its CCS entries.

[3] Because we conclude that this was a revocation proceeding, we do not need to reach J.S.'s evidentiary argument.

The judgment of the trial court is affirmed and remanded with instructions to clarify its CCS entries to show that this was a probation revocation hearing and not a new adjudication of delinquency.

NAJAM, J., and BAILEY, J., concur.